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**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MPA/157797

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**PRELIMINARY RECITALS**

Pursuant to a petition filed May 19, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on July 01, 2014, at Waukesha, Wisconsin.

The issue for determination is whether the Department of Health Services, Division of Health Care Access and Accountability (DHS) correctly denied Petitioner's request for an evaluation and assessment for a speech generating device.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

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Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: OIG by letter

Division of Health Care Access and Accountability  
1 West Wilson Street, Room 272  
P.O. Box 309  
Madison, WI 53707-0309

**ADMINISTRATIVE LAW JUDGE:**

Mayumi M. Ishii  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Waukesha County.

2. On April 2, 2014, [REDACTED] Therapies, SC submitted, on behalf of Petitioner, a request for prior authorization of an evaluation for a speech generating device and four sessions of service/assessment/training to teach the Petitioner and her parents how to use the device, at a cost of \$711.00. (Exhibit 6, pg. 4)
3. The Long Term Goals of the requested therapy are:
  - a. Communicate needs using voice output device with familiar communication partners in structured activities.
  - b. Demonstrate understanding of set-up and implementation of voice output communication system in home and community.

(Exhibit 6, pg. 13)
4. The Short Term Goals of the requested therapy are:
  - a. Will communicate requests of preferred toys/activities during structured therapy session using custom pages on iPad communication app from a field of up to 16/page 80% of opportunities.
  - b. Will independently navigate to appropriate page to access desired vocabulary item to request/label using custom pages on iPad communication app a minimum of 5x/session.
  - c. Will combine 2 symbols to communicate “more, all done, greeting + \_\_\_\_\_” a minimum of 5x/session with modeling and cueing.

(Exhibit 6, pg. 14)
5. On April 11, 2014, DHS sent the Petitioner a notice indicating that the requested services were denied. (Exhibit 6, pgs. 31-34)
6. On April 11, 2014, DHS sent [REDACTED] Therapies notice of the same. (Exhibit 6, pgs. 35-36)
7. Petitioner’s mother, on behalf of Petitioner, filed a request for fair hearing that was received by the Division of Hearings and Appeals on May 19, 2014. (Exhibit 1)
8. Petitioner has an Individualized Education Program (IEP) effective March 3, 2014 to January 30, 2015, but the IEP makes no explicit or specific mention of an extended school year. (Exhibit 8 pgs. 18-33)
9. Under Present Level of Academic Achievement and Functional Performance, the Petitioner is noted to have the expressive language skills of a 13 month old child; and she is noted to have developed the ability to communicate with gestures at 20 months. Petitioner’s issues with speech are noted to be consistent with a diagnosis of apraxia. However, “demonstration of good comprehension of instructions was noted while needing consistent prompts to ‘look here’ or ‘try this’ and several repetitions at times before she responded to requests.” Petitioner’s baseline for speech was described as, “communicates primarily using signs and other non-verbal gestures with good eye contact. Her speech consists of mostly jargon and babbling.” (Exhibit 6, pg. 21)
10. The IEP goal for speech is, “When modeled and requested of her, [Petitioner] will imitate a sound, work or action/sign language to indicate her wants/needs 2 of 4 opportunities measured by teacher checklists of observations. (Exhibit 6, pg. 26)

11. Per the IEP, the school district is obligated to provide speech and language therapy 20 minutes per week, three times per week, for 30 weeks within the school calendar. (Exhibit 6, pg. 27)
12. Petitioner's school also initiated use of and provided a PECs book. (Exhibit 6, pg. 11)
13. In addition to speech therapy at school, Petitioner also receives supplemental speech services through Children's Hospital. (Exhibit 6, pg. 11)
14. The long-term goal of therapy through Children's Hospital is for the Petitioner to, "verbally communicate with others." The short term objectives are:
  - a. Imitate simple vowels with 80% accuracy each in 90-days.
  - b. Imitate consonants /h, m, n, p, b/ with 80% accuracy in 90-days.
  - c. Imitate VC and CV combinations with the above consonants and varied vowels with 80% accuracy in 120 days.

(Exhibit 5, pg. 18)
15. Petitioner is three years old and suffers from Velocardiofacial syndrome a.k.a DiGeorge syndrome and as a result has difficulties with speech (apraxia) and gross motor skills. (Testimony of Petitioner's mother; Exhibits 1 and 2)
16. Petitioner needs continuing physical therapy to help her improve her balance, coordination, endurance, gait, strength and tone. (Exhibit 2)
17. Petitioner has an Individualized Education Program (IEP) effective March 3, 2014 to January 30, 2015, but the IEP makes no mention of an extended school year. (Exhibit 8 pgs. 18-33)

### **DISCUSSION**

The Department of Health Services sometimes requires prior authorization to:

1. Safeguard against unnecessary or inappropriate care and services;
2. Safeguard against excess payments;
3. Assess the quality and timeliness of services;
4. Determine if less expensive alternative care, services or supplies are usable;
5. Promote the most effective and appropriate use of available services and facilities; and
6. Curtail misutilization practices of providers and recipients.

Wis. Admin. Code § DHS107.02(3)(b)

"In determining whether to approve or disapprove a request for prior authorization, the department shall consider:

1. The medical necessity of the service;
2. The appropriateness of the service;
3. The cost of the service;
4. The frequency of furnishing the service;
5. The quality and timeliness of the service;
6. The extent to which less expensive alternative services are available;
7. The effective and appropriate use of available services;
8. The misutilization practices of providers and recipients;
9. The limitations imposed by pertinent federal or state statutes, rules, regulations or interpretations, including medicare, or private insurance guidelines;

10. The need to ensure that there is closer professional scrutiny for care which is of unacceptable quality;
11. The flagrant or continuing disregard of established state and federal policies, standards, fees or procedures; and
12. The professional acceptability of unproven or experimental care, as determined by consultants to the department.”

Wis. Admin. Code §DHS107.02(3)(e)

“Medically necessary” means a medical assistance service under ch. DHS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
- (b) Meets the following standards:
  1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
  2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
  3. Is appropriate with regard to generally accepted standards of medical practice;
  4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
  5. Is of proven medical value or usefulness and, consistent with s. DHS 107.035, is not experimental in nature;
  6. Is not duplicative with respect to other services being provided to the recipient;
  7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;
  8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
  9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

Wis. Adm. Code. §DHS 101.03(96m)

Speech and language therapy is a Medicaid covered service, subject to prior authorization after the first 35 treatment days. Wis. Admin. Code, § DHS107.18(2).

Petitioner has the burden to prove, by a preponderance of the credible evidence, that the requested level of therapy meets the approval criteria.

DHS, in its consultant letter, indicated that one of the objections it had to the requested therapy, was that it was not consistent with the goals of the therapy Petitioner was receiving from Children’s Hospital and from her school.

The on-line provider handbook located at <https://www.forwardhealth.wi.gov/WIPortal> contains guidelines for obtaining prior authorization of services. Guidelines for speech language therapy are found under the category Therapies: Physical, Occupational & Speech Language Pathology.

Topics 2781 and 2784 are found under the subheadings of Provider Enrollment & On-going Responsibilities/Communication/Requirements.

Topic 2781 states:

BadgerCare Plus PT, OT, and SLP providers are required to communicate with other providers as frequently as necessary to do the following:

- Avoid duplication of services.
- Ensure service coordination.
- Facilitate continuity of care.

Topic #2784 states that physical therapy, occupational therapy and speech language pathology providers, along with school-based service providers, are required to communicate with each other at least once a year. School based providers are required to cooperate with physical therapy, occupational therapy and speech language pathology providers who request copies of the child's IEP or components of the IEP team evaluation. *Online Provider Handbook, Topic # 2784*

In the case at hand, [REDACTED] Therapies requested services to acquaint the Petitioner and her parents with a speech generating device; specifically applications for an i-Pad, because [REDACTED] Therapies believes Petitioner's prognosis for speaking as a primary means of communication is poor. (See Exhibit 6, pg. 12 – Speech Generating Device Evaluation). However, the goals of therapy with Children's Hospital are to get the Petitioner to speak and Petitioner's school-based therapy is also working on getting the Petitioner to speak and to communicate using signs or PECs.

The record contains no explanation for these apparent conflicting opinions regarding Petitioner's potential for speech. The therapist from [REDACTED] Therapies indicates that the school SLP also agrees that Petitioner should be assessed for and taught to use a speech generating device, like an i-pad, but [REDACTED] [REDACTED] Therapies did not provide any written documentation from the school SLP to support this contention. (It should be noted that if the school district believes augmented communication with an iPad or other device is necessary for the Petitioner to make academic progress, the school is legally obligated under the Individuals with Disabilities Education Act to provide that training/therapy.) Further, under section IV, paragraph 16 of the Prior Authorization Attachment, there is no indication that the use of a speech generating device was discussed with the speech therapist from Children's Hospital. (See Exhibit 6, pg. 9) Based upon the foregoing, it is found that there has not been sufficient coordination of care to ensure appropriate continuity of care.

Without supporting documentation / credible testimony showing the appropriate coordination/continuity of care with both Children's Hospital and Petitioner's school-based SLP, there is insufficient evidence to support a finding that the requested services are appropriate as required under. Wis. Admin. Code §DHS107.02(3)(e). In the absence of such evidence, the Petitioner/[REDACTED] [REDACTED] Therapies cannot establish medical necessity, as defined in Wis. Admin. Code § Wis. Adm. Code. §DHS 101.03(96m), because it not clear whether the requested services "are contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient".

**Petitioner should note that [REDACTED] [REDACTED] Therapies may, at any time, submit a new prior authorization request with the necessary documentation attached.**

### **CONCLUSIONS OF LAW**

DHS correctly denied Petitioner's request for an evaluation and assessment for a speech generating device.

**THEREFORE, it is**

**ORDERED**

The Petition is dismissed.

**REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

**APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 11th day of July, 2014.

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\sMayumi M. Ishii  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on July 11, 2014.

Division of Health Care Access and Accountability